

USDC SCAN INDEX SHEET



PRICE

COUNTY OF SAN DIEGO

JRB

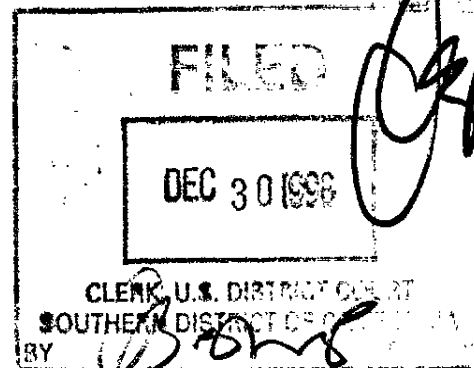
3:94-CV-01917

\*81\*

\*MEMFACTS.\*

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Attorneys for Plaintiffs



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANN PRICE, an individual;	)	CASE NO. 94-1917R (AJB)
ANN PRICE, as Guardian ad	)	
litem of BENJAMIN PRICE, a	)	PLAINTIFFS' MEMORANDUM OF
Minor and UNBORN BABY PRICE,	)	CONTENTIONS OF FACT AND LAW
a Minor in Utero; ROBERT	)	
PRICE; MARGARET PRICE and the	)	
Estate of DANIEL L. PRICE,	)	
deceased, through its	)	
Administrator, ANN PRICE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
COUNTY OF SAN DIEGO;	)	
JOHN GROFF; STEVEN CLAUSE;	)	
MARK TALLEY; JIM ROACHE;	)	
SAM SHEPARD; and DOES I	)	
through 50, inclusive,	)	
	)	
Defendants.	)	

Plaintiffs, ANN PRICE, an individual; ANN PRICE, as Guardian  
ad Litem of BENJAMIN PRICE, a Minor and JOSHUA PRICE, (formerly  
UNBORN BABY PRICE, a Minor in Utero); ROBERT PRICE; MARGARET PRICE  
and the Estate of DANIEL L. PRICE, deceased, through its  
Administrator, ANN PRICE, through their attorney Charles R. Woods,  
Esq. of TROST, STREET, WOODS & MESSINA, respectfully submit this  
Memorandum of Contentions of Fact and Law, pursuant to Local Rule

ORIGINAL

1 16.1 (f).

2 INTRODUCTION

3 This is a civil rights case brought pursuant to the Federal  
4 Civil Rights Act, 42 U.S.C. § 1983, et seq. Wrongful death state  
5 claims of battery, negligence and negligent hiring, training and  
6 supervision are alleged as well.

7 Plaintiffs allege that on June 28, 1994 Poway Sheriff deputies  
8 confronted plaintiff's decedent, DANIEL PRICE who, after a brief  
9 scuffle, placed Mr. PRICE in a four-point restraint (commonly  
10 referred to as a "hogtie"). DANIEL PRICE lost consciousness while  
11 he was hogtied and then died one and a half days later at Pomerado  
12 Hospital. The San Diego County Medical Examiner's autopsy report,  
13 prepared by Dr. John W. Eisele, Deputy County Medical Examiner,  
14 concluded that Mr. PRICE died from positional asphyxia caused by  
15 application of the hogtie and leaving Mr. PRICE prone after the  
16 hogtie restraints were removed. Low, non-lethal levels of  
17 methamphetamine were found in Mr. PRICE's blood and tissue during  
18 the autopsy.

19 Plaintiffs herein, i.e. DANIEL PRICE's estate, his surviving  
20 spouse, ANN PRICE, two children (seven year old BENJAMIN and one  
21 year old JOSHUA) and DANIEL's parents, MARGARET and ROBERT PRICE  
22 bring his action against the COUNTY OF SAN DIEGO, former County  
23 Sheriff JIM ROACHE, Deputies JOHN GROFF, STEVEN CLAUSE, SAMUEL  
24 SHEPPARD and MARK TALLEY.

25 Plaintiffs allege that the individual deputies used excessive  
26 and unreasonable and deadly force when they hogtied and later left  
27 DANIEL PRICE prone and unconscious, following the initial contact  
28 and failed to provide CPR first aid to DANIEL PRICE as he was

1 unconscious, not breathing and turning blue.

2 Further, plaintiffs allege that then sheriff JIM ROACHE was  
3 individually and representatively negligent in his decisions as to  
4 training and supervision of the deputies in the use of and  
5 application of and employment of the hogtie restraint, and further  
6 that the COUNTY OF SAN DIEGO, through the Sheriff Department  
7 displayed callous, reckless and deliberate indifference to the  
8 constitutional rights of DAN PRICE and other similarly situated  
9 arrestees, to be free from unreasonable and excessive force, by  
10 deliberately failing to implement proper policies and procedures  
11 with respect to the application of the hogtie restraint, until two  
12 months after DAN PRICE had been killed, even though Sheriff ROACHE  
13 and the Sheriff Department and through them, the COUNTY OF SAN  
14 DIEGO were in possession of the necessary scientific and medical  
15 data, two years previous to DAN PRICE's death, outlining the proper  
16 use of the hogtie procedure, and the dangers associated with  
17 hogtying if the proper procedures were not used by deputies  
18 applying a hogtie restraint.

19 The conduct displayed by the deputies was an unreasonable use  
20 of deadly and excessive force and thus constituted an unlawful  
21 seizure in violation of the Fourth Amendment. Graham v. Conner,  
22 109 S.Ct. 1865 (1989). The facts alleged also constituted a  
23 battery, negligence, and/or negligent training and supervision  
24 under California state law.

#### 25 STATEMENT OF FACTS

26 On June 28, 1994 at approximately 4:00 p.m., on a hot 100° day  
27 in Poway, California, DAN PRICE was contacted on Tobiasson Street,  
28 in Poway, California by sheriff deputy JOHN GROFF and reserve

1 deputy STEVEN CLAUSE. DAN PRICE was 37 years old at the time. Mr.  
2 PRICE was 6'3", 235 lbs., Deputy GROFF was 6'7", 270 lbs. and  
3 Deputy CLAUSE was 5'11", 255 lbs. The deputies had been dispatched  
4 to Tobiasson Road to investigate a citizen 911 complaint of a man  
5 throwing things in the bushes of a house. As they arrived at  
6 Tobiasson Road, GROFF and CLAUSE's patrol car drove beside a bronze  
7 pickup truck driven by DAN PRICE at Tobiasson Road and Shallman  
8 Street. PRICE told Deputy GROFF that he was fixing a mirror on his  
9 truck and explained that he was going to a friend's house. The  
10 deputies allowed Mr. PRICE to pull away but minutes later decided  
11 to follow him. When he made a turn other than what they expected,  
12 they determined that they would recontact Mr. PRICE and question  
13 him further. The deputies police car pulled Mr. PRICE over at the  
14 intersection of Tobiasson and Vaughn and parked itself  
15 approximately ten feet behind the tailgate of Mr. PRICE's pickup.  
16 Mr. PRICE exited his pickup truck first (according to Deputy  
17 GROFF's testimony but after Deputy GROFF exited his vehicle,  
18 according to Deputy CLAUSE's testimony). Deputy CLAUSE testified  
19 that he wrestled PRICE to the ground whereas Deputy GROFF contends  
20 that he wrestled PRICE to the ground. As Deputy GROFF handcuffed  
21 and sat upon Mr. PRICE, backup was called and Deputies SHEPPARD and  
22 TALLEY arrived shortly on the scene.

23       The four deputies determined that they should hogtie Mr. PRICE  
24 and leg shackles were obtained from TALLEY's patrol car and  
25 attached to Mr. PRICE's ankles. The shackled ankles and handcuffed  
26 wrists were then joined, behind Mr. PRICE's back, by a single set  
27 of handcuffs. Mr. PRICE allegedly was smashing his face into the  
28 ground before and after being hogtied and thereafter one of the

1 deputies was seen by one of the neighborhood witnesses to put his  
2 boot on the back of Mr. PRICE's head while Mr. PRICE was allegedly  
3 smashing his face into the ground.

4 During the struggle with the sheriff officers, DAN PRICE was  
5 sprayed with pepper spray (OC) by Deputy CLAUSE two or three times.

6 Mr. PRICE was prone on his belly and at various times was sat  
7 upon by Deputy GROFF and pressed into the ground by a knee in his  
8 upper back from Deputy TALLEY. The asphalt surface of the  
9 Tobiasson and Vaughn roadway intersection is calculated,  
10 scientifically, to have been 134° hot at the time DAN PRICE was  
11 placed upon it. DAN PRICE was left on that roadway surface and not  
12 moved by any of the deputies to shaded residential lawns only  
13 twenty or thirty feet away.

14 When DAN was noticed to be breathing heavily and later with  
15 shallow breathing, the deputies removed the connecting handcuffs  
16 from the leg and wrists shackles. No pulse was noted.

17 At 16:42 an ambulance was sent for by the four deputies  
18 requesting CPR/medical, (according to the paramedic records).  
19 Deputies CLAUSE and TALLEY had radioed sheriff's department  
20 headquarters at 16:36 reporting that they had "one in custody".  
21 Six minutes later the call was sent for the ambulance. The  
22 deputies contend that the call was sent to the ambulance only  
23 because PRICE was bleeding from the face. The paramedic records  
24 indicate a call was made for CPR/medical. Paramedics from the  
25 Poway Fire Department and the San Diego Fire Department along with  
26 hook and ladders arrived on the scene at 16:48. Neighborhood  
27 witnesses Tim Thomas and June Jones and Gene Syrios have testified  
28 that Mr. PRICE was not moving, turning blue, not breathing and

1 prone on his belly for at least seven to nine minutes prior to the  
2 arrival of the paramedics.

3 Although each of the deputies was trained in CPR first aid, no  
4 attempt at CPR resuscitation was made by the deputies prior to the  
5 paramedics arriving. Paramedics found DAN PRICE ten or twenty feet  
6 away from the deputies and prone, on his belly. One deputy, GROFF,  
7 was seen to be pacing back and forth, very much distraught and  
8 crying, at the time of their arrival. Deputy TALLEY later  
9 testified that Deputy GROFF was upset because it was the second  
10 death in which he had played a role, in a six-month period and that  
11 "two deaths in one year was too much" or words to that effect.  
12 Paramedics from Poway Fire Department and San Diego Fire Department  
13 began their work on DAN PRICE at the scene including application of  
14 CPR, the administration of drugs and intubation.

15 DAN was transported at 17:03 to Pomerado Hospital, ironically,  
16 where he had, three weeks earlier, quit his employment as  
17 supervisor of Transport Services at that hospital.

18 One and a half days later at 4:00 a.m. on June 30, 1994 DAN  
19 PRICE died. The autopsy of San Diego County Deputy Medical  
20 Examiner, John W. Eisele, M.D., stated cause of death to be  
21 "hypoxic encephalopathy due to restrictive asphyxia with  
22 cardiopulmonary arrest due to maximum restraint in prone position  
23 by law enforcement." Dr. Eisele described in his autopsy report  
24 that even after the maximum restraint was removed  
25 ". . . all external weight was removed from his body but he was  
26 left in a face down position". Petichae (pinpoint) hemorrhaging,  
27 which indicates compression of the torso causing asphyxia, were  
28 found in DAN PRICE's left eye. The autopsy report also uncovered

1 small, non-lethal quantities of methamphetamine in DAN PRICE's  
2 system. No one can testify how much methamphetamine was ingested  
3 or when it was ingested by DAN PRICE relative to the time of his  
4 contact with the sheriff deputies.

5 The police restraint technique of hogtying (maximum four-point  
6 restraint) had been studied by various police agencies around the  
7 country including but not limited to San Diego Police Department as  
8 early as 1992. By mid-1992 many police agencies throughout the  
9 country, including but not limited to SDPD, California Highway  
10 Patrol, Los Angeles Sheriffs, New York City Police Department,  
11 Walnut Creek Police Department, Kansas City Police Department, and  
12 many other agencies had begun to either outright ban the use of  
13 hogtying or if not ban it, carefully instruct the field deputies  
14 and officers in the proper use of hogtying. Particularly, deputies  
15 were told, prior to June 1994, that hogtie victims were not to be  
16 left on their belly and were not to be left unmonitored. Further,  
17 no arrestee at any time during the process of hogtying was to have  
18 force applied to their back.

19 In this case, none of the deputies involved received any  
20 training in the hogtie procedure nor were any of them ever  
21 instructed by San Diego Sheriff Department in the proper  
22 application of the technique on what was to be done once it had  
23 been applied to a person in custody.

24 The San Diego Sheriff Department and Sheriff ROACHE were in  
25 possession of the San Diego Police Department's Final Report of the  
26 In Custody Death Task Force in which the dangers of hogtying and  
27 its proper application, were carefully discussed. Sheriff ROACHE,  
28 however, was "not satisfied" that the San Diego Police Department



1 work was necessarily complete and therefore waited more than two  
2 years until August 1994, two months after DAN PRICE died, to send  
3 his first training bulletin to the San Diego Sheriff field deputies  
4 explaining how hogtying should be applied and what should be done  
5 once a person was in the hogtie position. The County of San Diego  
6 Sheriff Department deputies still use the hogtying technique,  
7 however, they are now receiving training on the proper application  
8 of the restraint and what should be done once a person is hogtied,  
9 including but not limited to monitoring, no back pressure, and no  
10 leaving of the subject in a prone position.

11 STATEMENT OF DAMAGES

12 This wrongful death action by the various plaintiffs seeks  
13 compensation for plaintiff's loss of society, comfort, love and  
14 affection in addition to the economic benefits that DAN PRICE would  
15 have afforded, had he lived, to his wife and two sons. DAN's  
16 parents, MARGARET and ROBERT PRICE seek damages to compensate them  
17 for their loss of their son relative to their "liberty interest" in  
18 the 42 § 1983 portion of the case.

19 Plaintiffs' economist, expert witness Robert Trout has  
20 testified at deposition that as of May 31, 1996 the economic losses  
21 to the wife and children, less DAN PRICE's consumption of monies  
22 and reduced to present value, total \$583,664.00. This figure  
23 represents \$43,635.00 in past lost income and \$540,029.00 in future  
24 lost income. Mr. Trout's calculations are attached as Exhibit 1.  
25 The past lost wages should be increased, for purposes of an April  
26 or May trial date to approximately \$70,000.00, for a total economic  
27 loss of roughly \$610,000.00.

28 DAN's parents, ROBERT and MARGARET PRICE's "liberty interest"

1 award would reasonably be in the amount of \$100,000.00 each (i.e.  
2 per parent).

3 The loss of consortium type damages associated with 12-year  
4 wife ANN's losses and seven year-old BENJAMIN and one-year old  
5 JOSHUA's losses are extremely difficult to estimate. A reasonable  
6 figure for such losses would be \$1 million per wife and per child.

7 WRONGFUL DEATH CASE INFORMATION

8 DAN PRICE's date of birth: August 22, 1958 (i.e. 35 years 10  
9 months at the time of death); married March 12, 1983 to ANN PRICE:  
10 date of birth: August 20, 1957; employed by Palomar/Pomerado  
11 Health System since 1985, promoted to supervisor of Transport  
12 Services in July 1989 to June 1, 1994 when he quit his job due to  
13 stress 27 days before his death; Plaintiff's expert testimony  
14 indicates certain work expectancy after quitting with reasonable  
15 probability of promotion (testimony of Richard Sobel, Ph.D. and  
16 Richard Jones, Ph.D.); earnings for 5 years before death: 1990 -  
17 \$20,416.00; 1991 - \$26,656.00; 1992 - \$30,110.09; 1993 -  
18 \$31,390.93; 1994 (5 months) \$12,906.00 (i.e. \$31,000.00 if a full  
19 year); Life expectancy: 75.1 years, work life expectancy: 62.7  
20 years; good general physical condition prior to death; Dates of  
21 birth of relatives: son, BENJAMIN date of birth: October 16, 1989;  
22 son, JOSHUA date of birth: February 14, 1995; mother, MARGARET 59  
23 years old; father, ROBERT 61 years old. Injuries claimed by  
24 relatives: Wife, ANN and sons BEN and JOSHUA: loss of financial  
25 support, society, comfort, love and affection, as previously  
26 listed, mother and father: liberty interest losses; allocations of  
27 the family's and decedents expenses are found in Exhibit 1 hereto.  
28 The minor Plaintiffs claim for loss of the care and nurture (etc.)

1 of their father is \$1 million for each boy.

2 POINTS OF LAW

3 The relevant points of law claimed by plaintiffs are as  
4 follows:

5 SHERIFF DEPUTIES DEFENDANT LIABILITY

6 1. In hogtying plaintiff, at which time defendant deputies  
7 stepped on DAN PRICE's head, forcing it into the asphalt surface of  
8 the roadway and severely lacerated his wrists and ankles with the  
9 manacles, and then leaving DAN PRICE unattended, unmonitored and  
10 literally roasting on the 134° asphalt road surface, and by failing  
11 to provide CPR first aid which would likely have resuscitated Mr.  
12 PRICE, the defendant deputies used unreasonable deadly force in  
13 violation of plaintiff's Fourth Amendment right against  
14 unreasonable seizures. U.S. Constitution, Fourth Amendment; Graham  
15 v. Connor 490 U.S. 386 (1989); Tennessee v. Garner, 471 U.S. 1  
16 (1985).

17 2. The sheriff deputies continued to use deadly force  
18 against DAN PRICE when they allowed him to remain prone, on his  
19 belly, not breathing, turning blue, remaining unconscious, and the  
20 deputies left him unattended and failed to provide the necessary  
21 CPR first aid to resuscitate him, after he had stopped breathing,  
22 even though the alleged threat possessed by DAN PRICE to the  
23 officers had been rendered less than that which justified the  
24 deadly force applied. Therefore a cause of action is stated.  
25 Hopkins v. Andaya, 958 F.2d 881 (9th Cir. 1992).

26 3. A Fourth Amendment violation requires an intentional  
27 acquisition of physical control. Brauer v. County of Inyo, 49 U.S.  
28 593, 596 (1989). However, the gross negligence and recklessness of

1 the deputies in this case, i.e. leaving DAN PRICE in a prone  
2 condition, unattended and unmonitored, and failing to provide CPR  
3 to DAN PRICE when he was unconscious and not breathing, after they  
4 had previously battered his face and arms and wrists during the  
5 application of the shackles, states a violation of the due process  
6 clause of the Fourteen Amendment. Del Fargo v. City of San Juan  
7 Bautista, (9th Cir. 1988) 857 F.2d 638.

8 4. Abusive use of handcuffs by police officers states a 42  
9 § 1983 cause of action. Hanson v. Black (9th Cir.) 885 F.2d 642.

10 5. The sheriff deputies in this case displayed deliberate  
11 indifference to DAN PRICE's constitutional rights. Redman v.  
12 County of San Diego (9th Cir. 1991) 942 F.2d 1435, 1443.

13 6. The sheriff deputies in this case violated DAN PRICE's  
14 Fourth Amendment rights and were negligent for failure to provide  
15 CPR first aid to DAN PRICE after they knew or should have known  
16 that he had stopped breathing and was turning blue. Estelle v.  
17 Gamble, 429 U.S. 97 (1976); City of Reiver v. Massachusetts  
18 General Hospital, 463 U.S. 239, 244 (1983); Maddox v. City of Los  
19 Angeles (9th Cir. 1986) 792 F.2d 1408; Wilson v. Meeks (10th Cir.  
20 1995) 52 F.3d 1547.

21 7. DANIEL PRICE, plaintiff's decedent, was assaulted and  
22 battered by deputies GROFF, CLAUSE, TALLEY and SHEPPARD by their  
23 use of unreasonable deadly force in hogtying DAN PRICE and allowing  
24 him to remain prone, unmonitored, turning blue and not breathing  
25 for five to fifteen minutes before the arrival of the paramedic  
26 ambulance. BAJI 7.50-7.51 (1992 Revision); Raines v. Superior  
27 Court (1984) 150 Cal.App.3d 933, 938.

28 8. The circumstances of this incident and the hogtying

1 itself and the attendant behavior of the deputies following  
2 application of the hogtie restraint constituted negligence and a  
3 breach of the duty of due care owed to DAN PRICE, causing injuries  
4 to plaintiff's decedent DAN PRICE entitling plaintiffs to wrongful  
5 death damages pursuant to California law. BAJI 3.00-3.12; Grudt v.  
6 City of Los Angeles 2 Cal.3d 575 (1970) and; California Government  
7 Code § 815.2.

#### 8 MUNICIPAL LIABILITY

9 A municipality is directly liable under 42 § U.S. 1983  
10 for a constitutional deprivation caused by its  
11 unconstitutional policy or procedures. Monell v.  
12 Department of Social Services of New York 436 U.S. 658  
13 (1978).

14 1. The standard for imposing municipal liability under 42 §  
15 U.S. 1983 is deliberate indifference to the rights of persons with  
16 whom police come in contact. City of Canton v. Harris 489 U.S. 378  
17 (1989).

18 A municipality can be held liable, however, only when its  
19 policies are the moving force behind the violation. Polk  
20 County v. Dodson 454 U.S. 312 (1981).

21 2. Then San Diego County Sheriff, Jim Roache has testified  
22 that he made a conscious decision not to ban hogtying and not to  
23 train his deputies in the application of hogtying and of the  
24 attendant dangers to this restraint technique, even though police  
25 agencies throughout the country had done so, (particularly San  
26 Diego Police Department), and therefore, under Monell and Canton  
27 and related cases because Sheriff Roache was a municipal policy  
28 maker under City of St. Louis v. Proprotnik 485 U.S. 112 (1988),  
the COUNTY has demonstrated the requisite deliberate indifference  
required for direct liability against a municipality. Monell,  
supra.

1           3. Plaintiffs are entitled to general and compensatory  
2 damages and liberty interest damages for all injuries and damages  
3 legally caused by the acts of the defendants. 42 U.S.C. § 1983 et.  
4 seq.; BAJI 14.00 et seq.

5           4. Plaintiffs are entitled to punitive damages against  
6 defendants GROFF, CLAUSE, TALLEY, SHEPPARD and ROACHE pursuant to  
7 Federal law if plaintiffs proof reckless or malicious or callous  
8 indifference to DAN PRICE's federally protected rights. Smith v.  
9 Wade 461 U.S. 30 (1983); Gordon v. Norman (6th Cir. 1986) 788 F.2d  
10 1194, 1199.

11           5. Should plaintiffs prevail, they will be entitled to costs  
12 and attorney's fees pursuant to 42 U.S.C. § 1988. City of  
13 Riverside v. Rivera (1986) 477 U.S. 561 (1986).

14           6. This Court has supplemental/pendent jurisdiction of  
15 plaintiffs' state law causes of action. Traver v. Meshriy (9th  
16 Cir. 1980) 627 F.2d 934; 28 U.S.C. § 1367.

17           7. Then County Sheriff JIM ROACHE, defendant herein, is  
18 personally liable pursuant to state law and federal law.  
19 California Government Code § 82.8; Ybarra v. Reno, etc. (9th City.  
20 1984) 723 F.2d 675; Michael v. Smith, 188 Cal.App. 199 (1922);

21           8. Plaintiffs' state law causes of action for negligent  
22 hiring, training, retention and supervision is proper. Grudt v.  
23 City of Los Angeles 2 Cal.3d 575 (1970); Bell v. City of Palos  
24 Verdes Estates, 224 Cal.App.2d 257.

25           9. COUNTY OF SAN DIEGO is vicariously liable for its  
26 employees' negligence under Government Code § 815.2 and the  
27 doctrine of respondeat superior. See Tony v. State 54 Cal.App.3d  
28 779 (1976).

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ABANDONED ISSUES


No issues have been abandoned. Defendants' summary judgment motion, however, was granted as to plaintiffs' claim under California Civil Code § 52.1.

EXHIBITS

See attached list of plaintiffs' exhibits.

WITNESSES

See attached list of plaintiffs' witnesses.

DATED: December 30, 1996      Respectfully submitted,  
  
TROST, STREET, WOODS & MESSINA  
By:   
CHARLES R. WOODS  
Attorneys for Plaintiffs





Decedent: Dan Price

### CHRONOLOGY

Event	Date	Age	Notes
Contact	07-Mar-96	na	Letter
DOV	21-May-96	37.7	
DOB	22-Aug-58		Letter
Hired	23-Apr-85	26.7	Letter
Quit	01-Jun-94	35.8	Letter
DOD	28-Jun-94	35.8	Letter
WLE @ DOD	22-May-2021	62.7	BLS A-3(9)
Reach 62	21-Aug-2020	62.0	
LE @ DOD	15-Oct-2033	75.1	HUD 6-3

Spouse	Mrs. Ann Price		
@ DV	21-May-96	38.8	
DB	20-Aug-57		
@ DD	28-Jun-94	36.9	
LE @ DD			
Ben	Child		
@ DV	21-May-96	5.9	
DB	01-Jul-90	Est	
@ DD	28-Jun-94	4.0	
Josh	Child		
@ DV	21-May-96	1.4	
DB	01-Jan-95	Est	
@ DD	28-Jun-94	-0.5	

### Household Work:

Male Rate (1987)	\$6.34
Female Rate (1987)	\$5.65
Male Rate (1995)*	\$8.72
Female Rate (1995)*	\$7.77
*Adjusted for inflation	
[1996 CPI] / [1987 CPI]	
156.3/113.6 =	1.3758

### Benefits:

Medical	7.50%
Retirement	2.60%
Life Insurance	0.80%
FICA	6.40%
TOTAL	17.30%

1994 Employee Benefits,  
US Chamber of Commerce,  
Table 14.

### EARNINGS:

Year	Total*1	Notes
1989	\$20,078	
1990	\$19,641	
1991	\$26,656	
1992	\$30,110	
1993	\$31,391	
1994	\$31,850	Estimated for 1994

### LOSS SUMMARY

Past	\$43,635
Future	\$540,029
Total	\$583,664

EXHIBIT 23  
 Trout, R.  
 5-31-96  
 (3 pgs total)

Losses to Survivors of: Dan Price

Year	t	AGES		D. Price Income \$	% Ben \$	Total Income \$	Household Production				Total HH Prod \$	Total Income + HH Prod
		DP	AP				Dan Price hr/wk	\$	Ann Price hr/wk	\$		
				(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
					@ 17.3%	(1) + (2)		@ \$8.72/hr		@ \$7.77/hr	(5+7)	(3+8)

Past Losses:

1994	36	37	0	0	0	7.6	1,728	46.2	9,328	11,056	11,056
1995	37	38	31,850	5,510	37,360	7.8	3,524	46.4	18,773	22,297	59,657
1996	38	39	15,925	2,755	18,680	7.9	1,796	46.7	9,445	11,241	29,921
TOTALS											

Future Losses:

1996	0.3	38	39	15,925	2,755	18,680	7.9	1,796	46.7	9,445	11,241	29,921
1997	1	39	40	31,850	5,510	37,360	8.1	3,661	47.0	19,007	22,668	60,028
1998	2	40	41	31,850	5,510	37,360	8.2	3,729	47.3	19,124	22,853	60,213
1999	3	41	42	31,850	5,510	37,360	8.4	3,797	47.6	19,242	23,038	60,398
2000	4	42	43	31,850	5,510	37,360	8.5	3,865	47.9	19,359	23,223	60,583
2001	5	43	44	31,850	5,510	37,360	8.7	3,933	48.2	19,476	23,409	60,769
2002	6	44	45	31,850	5,510	37,360	8.8	4,001	48.5	19,593	23,594	60,954
2003	7	45	46	31,850	5,510	37,360	9.0	4,069	48.8	19,710	23,779	61,139
2004	8	46	47	31,850	5,510	37,360	9.1	4,137	49.1	19,828	23,964	61,325
2005	9	47	48	31,850	5,510	37,360	9.3	4,205	49.3	19,945	24,150	61,510
2006	10	48	49	31,850	5,510	37,360	9.4	4,273	49.6	20,062	24,335	61,695
2007	11	49	50	31,850	5,510	37,360	9.6	4,341	49.9	20,179	24,520	61,880
2008	12	50	51	31,850	5,510	37,360	9.7	4,409	50.2	20,297	24,706	62,066
2009	13	51	52	31,850	5,510	37,360	9.9	4,477	50.5	20,414	24,891	62,251
2010	14	52	53	31,850	5,510	37,360	10.0	4,545	50.8	20,531	25,076	62,436
2011	15	53	54	31,850	5,510	37,360	10.2	4,613	51.1	20,648	25,261	62,621
2012	16	54	55	31,850	5,510	37,360	10.3	4,681	51.4	20,765	25,447	62,807
2013	17	55	56	31,850	5,510	37,360	10.5	4,749	51.7	20,883	25,632	62,992
2014	18	56	57	31,850	5,510	37,360	10.6	4,817	52.0	21,000	25,817	63,177
2015	19	57	58	31,850	5,510	37,360	10.8	4,885	52.2	21,117	26,002	63,362
2016	20	58	59	31,850	5,510	37,360	10.9	4,953	52.5	21,234	26,188	63,548
2017	21	59	60	31,850	5,510	37,360	11.1	5,021	52.8	21,352	26,373	63,733
2018	22	60	61	31,850	5,510	37,360	11.2	5,089	53.1	21,469	26,558	63,918
2019	23	61	62	31,850	5,510	37,360	11.4	5,157	53.4	21,586	26,744	64,104
2020	24	62	63	31,850	5,510	37,360	11.5	5,225	53.7	21,703	26,929	64,289
2021	25	63	64	13,377	2,314	15,691	11.7	2,223	54.0	9,165	11,388	27,079
TOTALS						\$931,012		\$110,652		\$507,134	\$617,786	\$1,548,798

Losses to Survivors of: Dan Price

Total Income + HH Prod	Consumption		Gross Loss	PV of Loss @ 2.0%	Cumul PV of Loss \$	Disc Rate 2.00% Total Loss
	Dan Price %	\$				
(9)	(10)	(11)	(12)	(13)	(14)	
(3+8)		(9+10)	(9-11-7)			\$583,664

11,056	18.5%	2,045	(317)	(317)	(317)	
59,657	19.2%	11,454	29,430	29,430	29,113	
29,921	19.9%	5,954	14,522	14,522	43,635	6 months

43,635

29,921	19.9%	5,954	14,522	14,450	58,085	6 months
60,028	20.6%	12,366	28,655	28,093	86,178	
60,213	21.2%	12,765	28,324	27,224	113,402	
60,398	21.7%	13,106	28,050	26,432	139,835	
60,583	22.2%	13,450	27,775	25,660	165,495	
60,769	22.7%	13,795	27,498	24,906	190,401	
60,954	23.1%	14,080	27,280	24,224	214,625	
61,139	23.5%	14,368	27,061	23,558	238,183	
61,325	23.8%	14,595	26,902	22,960	261,143	
61,510	24.1%	14,824	26,741	22,376	283,519	
61,695	24.3%	14,992	26,641	21,855	305,374	
61,880	24.5%	15,161	26,540	21,345	326,719	
62,066	24.0%	14,896	26,873	21,189	347,909	
62,251	24.1%	15,002	26,835	20,744	368,653	
62,436	24.1%	15,047	26,858	20,355	389,008	
62,621	24.2%	15,154	26,819	19,927	408,935	
62,807	24.2%	15,199	26,842	19,553	428,488	
62,992	23.4%	14,740	27,369	19,546	448,034	
63,177	23.4%	14,783	27,394	19,180	467,214	
63,362	23.3%	14,763	27,482	18,864	486,078	
63,548	23.1%	14,680	27,634	18,597	504,675	
63,733	23.0%	14,659	27,723	18,291	522,966	
63,918	22.8%	14,573	27,876	18,031	540,997	
64,104	22.5%	14,423	28,094	17,816	558,813	
64,289	22.3%	14,336	28,249	17,563	576,376	
27,079	22.0%	5,957	11,957	7,288	583,664	
\$1,548,798		\$357,670	\$683,994	\$540,029		5 months

PLAINTIFFS' WITNESS LIST

Lark Beardon, Palomar/Pomerado Health System

Wallace Benson, 15478 Bandy Canyon Road, Escondido, CA 92025;  
Telephone: (619) 743-0360; (San Diego Fire Department/Retired)

Sandi Bias, 12460 Vaughn Road, Poway, CA 92064; Telephone: 748-3175

Capt. Scott Boies, San Diego Sheriff's Department

Jeff Butler, San Diego Fire Department, Station 42, 12119 World  
Trade Drive, San Diego, CA 92128

Det. John Cherry, San Diego Sheriff's Department

Steven Clause, San Diego Sheriff's Department

Amber Creighton, 12460 Vaughn Road, Poway, CA 92064

Heather Creighton-Bias, 12460 Vaughn Road, Poway, CA 92064

Sgt. Creighton, San Diego Sheriff's Department

John W. Eisele, M.D., County of San Diego, Medical Examiner's  
Office

Sgt. G. Foote, San Diego Sheriff's Department

Orred Gabriel, (Address unknown)

George Gardener, San Diego Sheriff's Department

John Groff, San Diego Sheriff's Department

Sam Ikemoto, Palomar/Pomerado Health System

Det. D. Jopes, San Diego Sheriff's Department

Joan Jones, 13840 Tobiasson Road, Poway, CA

Ronnie Jones, San Diego Fire Department, 12119 World Trade Drive,  
San Diego, CA 92128

Barbara Knox, 15615 Pomerado Road, Poway, CA 92064

Aramide Lapite, 5727 Canoga Avenue, Apt. 265, Woodland Hills, CA  
91367; Telephone: (818) 999-1550

Nancy Lawton, Palomar/Pomerado Health System

Tim Malone, 13644 Hilleary Place, Apt. 229, Poway, CA 92064

John McDonnell, San Diego Sheriff's Department

Beverly Miller, c/o Pomerado Hospital (nursing)

Det. Genero Moreno

Norm Pawchuk, San Diego Sheriff's Department

Scott Post, Poway Fire Department, 13050 Community Road,  
Poway, CA 92064

Ann Price, 13007 Berlin Street, Poway, CA 92064

Benjamin Price, 13007 Berlin Street, Poway, CA 92064

Joshua Price, 13007 Berlin Street, Poway, CA 92064

Margaret Price, 5501 W. May Road, Bloomington, Indiana 47403;  
Telephone: (812) 824-7084

Robert Price, 5501 W. May Road, Bloomington, Indiana 47403;  
Telephone: (812) 824-7084

Michael Quitagua, Poway Fire Department, 13050 Community Road,  
Poway, CA 92064

Chris Thomas Roberts (Address unknown)

Det. F. Rowe, San Diego Sheriff's Department

Deputy M. Selman, San Diego Sheriff's Department

Samuel Sheppard, San Diego Sheriff's Department

Deputy Tom Snowden, San Diego Sheriff's Department

Sgt. Julie Sutton, San Diego Sheriff's Department

Eugene L. Syrios, 13828 Tobiasson Road, Poway, CA 92064

Mark Talley, San Diego Sheriff's Department

Chris Thomas (Address unknown)

Timothy J. Thomas, 13805 Tobiasson Road, Poway, California 92064

Custodian of Records:

- San Diego Sheriff's Department
- San Diego Police Department
- Palomar/Pomerado Health System
- Law/Crandall, Inc.
- Poway Fire Department
- San Diego Fire Department
- San Diego County Grand Jury
- San Diego County Medical Examiner's Office

Case Title: Ann Price, et al.

Case No. 94-1917R (AJB)  
vs. County of San Diego, et al.

**LIST OF PLAINTIFFS' EXHIBITS**

NUMBER	DATE MARKED	DATE ADMITTED	DESCRIPTION
			San Diego Sheriff Call Log Printout
			Dan Price's Daytimer
			Dan Price's wallet
			Dan Price's checkbook
			Sheriff report diagram of scene of stop
			Sheriff photo of scene depicting scene, Price vehicle and 1 patrol car
			Sheriff photo of scene depicting scene, Price vehicle and 1 patrol car
			Sheriff photo of scene depicting scene, Price vehicle and 1 patrol car
			Sheriff photo of scene depicting scene, Price vehicle and 1 patrol car
			Diagram Exhibit 2 to Groff deposition
			Diagram Exhibit 2 to Clause deposition
			Diagram Exhibit 2 to Sheppard deposition
			Poway Fire Department Paramedic records (Quitugua and Post)
			San Diego Fire Department call records
			Pomerado Hospital records
			Pomerado Hospital bills
			County of San Diego Medical Examiner's Autopsy Report #94-1204 by Dr. John Eisele including toxicology reports
			Photo of Dan Price's face at Pomerado Hospital #9/2401
			Photo of Dan Price's face at Pomerado Hospital #8/2401
			Photo of Dan Price's face at Pomerado Hospital #16/2401

Photo of Dan Price's face at Pomerado Hospital #18/2401

Photo of Dan Price in shorts attended by doctors #21/2401

Photo of Dan Price's knees #24/2401

Photo of Dan Price's right ankle #12/2401

Photo of Dan Price's left ankle #13/2401

Photo of Dan Price's left wrist #119/2419

Photo of Dan Price's right wrist #195/2583

Photo of Dan Price's left wrist #126/2419

Photo of Dan Price's right wrist #124/2419

Photo of Dan Price's left wrist #120/2419

Photo of Dan Price's right wrist #196/2583

Photo of Dan Price's left wrist #6/2401

Photo of Deputy Groff at hospital #17/2398

Photo of Deputy Groff at hospital #8/2391

Photo of Deputy Talley at hospital #13/2398

Photo of Deputy Clause at hospital #15/2398

Photo of Deputy Sheppard at hospital #28/2398

Photo of Deputy Groff's name plate at hospital #18/2391

Photo of Deputy Groff's right hand at hospital #16/2391

Photo of Deputy Groff's right elbow at hospital #22/2398

San Diego Sheriff's Department Press Release  
re: Dan Price

San Diego Sheriff's Department "Found  
Property" document dated 6/30/94

San Diego Sheriff's Department follow up  
investigative report - 5 pages by Det. Jopes  
dated 8/11/94

San Diego Sheriff's Department follow up  
investigative report -  
3 pages by Det. Cherry dated 9/14/94

San Diego Sheriff's Department follow up  
investigative report - 5 pages by Det. Rowe  
dated 7/20/94

San Diego Sheriff's Department follow up  
investigative report re: interview of Deputy  
Clause by Det. Jopes - 3 pages dated 8/11/94

San Diego Sheriff's Department follow up  
investigative report - 1 page, re: second  
interview of Deputy Clause dated 8/29/94

San Diego Sheriff's Department follow up  
investigative report re interview of Deputy  
Sheppard - 2 pages by Det. Morens dated  
8/18/94

San Diego Sheriff's Department follow up  
investigative report - 5 pages re: interview  
of Deputy Talley by Det. Cherry dated 7/19/94

San Diego Sheriff's Department follow up  
investigative report - 2 pages re: interview  
of Deputy Sheppard by Det. Morens dated  
8/18/94

San Diego Sheriff's Department follow up  
investigative report - 1 page re: interview  
of witness Tim Thomas by Det. Jopes dated  
8/11/94

Interview of Deputy Groff by Detective Rowe  
and Moreno dated 6/28/94 - 22 pages

Interview of Deputy Clause by Detectives Rowe  
and Jopes dated 6/28/94 - 18 pages

Interview of Deputy Clause by Detectives  
Jopes and Rowe dated 8/16/94 - 12 pages

Interview of Deputy Talley by Detectives  
Cherry and Moreno dated 6/28/94 - 17th pages

Interview of Deputy Sheppard by Detective  
Moreno dated 6/28/94 - 12 pages

Deputy Sheppard's "Deputy's Daily Patrol Log"  
dated 6/28/94

Deputy Groff's "Deputy's Daily Patrol Log"  
dated 6/28/94

3 page computer printout San Diego Sheriff's  
Department "Complaint History Detail call  
#941790923

San Diego Sheriff's Department Manual of  
Policies and Procedures (18 pages produced  
in discovery by defendants)

Death Certificate re: Dan Price and  
amendment re: cause of death



File of Dr. Eisele re: Dan Price (Exhibit 15, to Eisele deposition)

San Diego Sheriff's Department 75th Academy Class Schedule of Deputy Talley

San Diego Sheriff's Department 73rd Sheriff's Academy Class Schedule of Deputy Groff

The Final Report of The Custody Death Task Force by San Diego Police Department June 1992

Various articles on positional asphyxia by Dr. Donald Reay

Article by Cal Krosch (SDPD), "Some In Custody Deaths Cited as Preventable (1992)

1992 San Diego County Grand Jury responses and questions

The 1991 - 1992 San Diego County Grand Jury Final Report

San Diego County 7/16/92 Inter-Departmental memo from San Diego Sheriff's Department Lt. Tenwolde to J.G. Cellucci re: positional asphyxia - deaths of arrestees with accompanying articles

San Diego Sheriff's Department Inter-office Memo to Capt. Boies from A/S Mel Nichols. Subject: Positional asphyxia dated 7/20/92

County of San Diego inter-departmental memo of 7/21/92 from Capt. Boies to Lt. Peltner, Sgt. Reynolds and Dep. Snowden and Training Division re: positional asphyxia

10/5/92 County of San Diego inter-departmental correspondence from Dep. Snowden to Capt. Boies

1/29/93 San Diego Sheriff's Department memo "Safety Precautions" re: the Pro-Straint Vehicle Seat

10/6/93 Inter-departmental memo from Dep. Tom Snowden to Lt. John Tenwolde re: "composite report and needs assessment for non-lethal use of force policy, procedures and equipment"

San Diego Sheriff's Department 4/94 Lesson Plan Nine and San Diego Regional Law Enforcement Training Center Arrest and Control document (44 pages)

San Diego Sheriff's Department August 1994 Training Bulletin entitled "Custody Deaths and Restraining Techniques" (3 pages)

S.I.C.D.S. Training Manual by MSI, Mace Security International

Videotape, MSI, Awareness Training for Positional Asphyxia Training for Positional Asphyxia and Sudden In Custody Death

American Heart Association, Instructor's Manual for Basic Life Support

American Heart Association, Heartsaver Manual

CPR practice "dummy"

Time line chart re: sheriff deputy contact with Dan Price

Dan Price's payroll records

Price family financial records

Dan Price's life longitudinal time line re: probability of future employment

Report of engineer James G. Copley, Law/Crandall re: asphalt temperature

3 Charts of Plaintiffs' economist Robert Trout

Audio tapes produced by San Diego Sheriff's Department

- from SDSD Communication Center
- interviews of Deputies Groff, Clause, Talley and Sheppard

San Diego Sheriff's Department I.A. documents re: brutality complaint of Orned Gabriel June through August 1988 against Deputy Groff

I.A. documents re: brutality complaint of Chris Thomas of August 1989 against Deputy Groff

CPR/First Aid refresher course training records of Deputy Groff

1994 SDSD Employee Evaluation of Deputy John Groff by Sgt. Julie Sutton (4 pages) (1994)

1993 SDSD Employee Evaluation of Deputy John Groff

1986 SDSD probationary employee rating of Deputy Groff

San Diego County Superior Court records in Pena v. County of San Diego and John Groff, Case No. EC007365

Excerpts of deposition transcript of Thomas Neuman, M.D.

Excerpts of deposition transcript of Donald T. Reay, M.D.

Excerpts of deposition transcript of Louis Reiter

Excerpts of deposition transcript of John W. Eisele, M.D.

Excerpts of deposition transcript of Robert D. MacFarlane, M.D.

Excerpts of deposition transcript of Jim Roache

Excerpts of deposition transcript of Thomas Snowden

Excerpts of deposition transcripts of John Groff

Excerpts of deposition transcript of Steven Clause

Excerpts of deposition transcript of Mark Talley

Excerpts of deposition transcript of Samuel Sheppard

San Diego Police Department Policy Manual Section 6.12

Excerpts of deposition transcript of Elmer J. Pellegrino

The U.S. Department of Justice, Office of Justice Programs, National Law Enforcement Technology Center article June 1995 entitled "Positional Asphyxia - Sudden Death"

The publication "POLICE, the Law Officers' Magazine in its July 1996, Volume 20, Number 7 edition article by Sgt. Dennis McCauley, "Gasping for Breath"

Article from the POLICE magazine edition (July 1996) entitled "Combative Subjects Require Special Care"

1 CHARLES R. WOODS, ESQ. (SB#95637)  
2 TROST, STREET, WOODS & MESSINA  
3 1202 Kettner Boulevard, Suite 4300  
4 San Diego, California 92101  
5 (619) 233-7633

6 Attorneys for Plaintiffs

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 ANN PRICE, an individual;	)	CASE NO. 94-1917R (AJB)
11 et al.,	)	
12 Plaintiffs,	)	
13 v.	)	DECLARATION OF SERVICE
14 COUNTY OF SAN DIEGO; et al.,	)	BY MAIL
15 Defendants.	)	

16 I, the undersigned, declare that:

17 I am over the age of eighteen years and not a party to the  
18 action; I am employed in the County of San Diego, California,  
19 within which county the subject mailing occurred; my business  
20 address is 1202 Kettner Boulevard, Suite 4300, San Diego,  
21 California 92101. I am readily familiar with our law firm's  
22 practice for collection and processing of mail for mailing with the  
23 United States Postal Service. On the date set forth below, I  
24 served the following document(s): **PLAINTIFFS' MEMORANDUM OF**  
25 **CONTENTIONS OF FACT AND LAW** on the parties in the action by placing  
26 a true copy thereof in a separate envelope for each addressee named  
27 hereafter, addressed to each such addressee respectively as  
28 follows:

1 RICKY R. SANCHEZ, Deputy County Counsel (SB# 107559)  
2 COUNTY OF SAN DIEGO  
3 1600 Pacific Highway, Room 355  
4 San Diego, California 92101-2469  
5 (619) 531-4874  
6 Attorneys for Defendants

7 I then sealed each envelope and placed each for collection and  
8 mailing on Dec. 30, 1996, following ordinary business  
9 practices.

10 I declare under penalty of perjury under the laws of the State  
11 of California that the foregoing is true and correct.

12 Executed on Dec. 30, 1996.

13 Carol Fox  
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